

# **State of Alaska FY2003 Governor's Operating Budget**

## **Department of Law Special Litigation Component Budget Summary**

## **Component: Special Litigation**

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## **Component Mission**

Mission statement appears at the department summary and BRU levels.

## **Component Services Provided**

Defend litigation involving tort claims against the state and state employees, maritime personal injury claims, and civil rights claims under 42 U.S.C. § 1983, such as wrongful death suits against DOT&PF for vehicle accidents on state roads, claims of injury occurring at state facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway System raised by ferry employees and passengers, claims of negligence in handling of children's abuse or neglect cases, cases against the state for actions of third parties in state custody (e.g., probationers, foster children), and other claims of injury caused directly by state officials (e.g., troopers, drivers of state vehicles, etc.).

Defend controverted workers' compensation claims in which the state is the employer.

Provide legal services to the Division of Risk Management and, through it, to all state agencies.

Defend the court system and judges in personal injury lawsuits.

Defend workers' compensation cases before the Alaska Workers' Compensation Board and at the appellate level.

Provide oral advice to state adjusters and state agencies on workers' compensation issues.

Provide oral advice to state agencies on risk management/liability issues.

Provide instructors on liability issues, e.g., trooper and correctional academies.

Supervise work of and manage contracts in tort and workers' compensation matters with outside counsel retained by the Division of Risk Management or the Department of Law.

## **Component Goals and Strategies**

Provide legal defense in tort litigation cases filed against the state, state agencies, and state employees, including personal injury, property damage, and civil rights suits brought under 42 U.S.C. § 1983.

Provide legal defense in contested workers' compensation claims filed by state employees.

Litigate cases to favorable resolution, up to and including trial and appeal - or appropriate settlement.

Provide oral advice and training to reduce the state's liability exposure.

Reduce defense costs by maximizing the number of cases handled by departmental staff rather than outside, private counsel.

Successfully and thoroughly defend tort litigation against the state, and do so at a fraction of the cost that private counsel would charge to do the job.

Provide reliable in-house expertise to the gamut of state agencies, developed from years of experience in doing public sector tort litigation.

## Key Component Issues for FY2002 – 2003

No key issues.

## Major Component Accomplishments in 2001

During fiscal Year 2001, the Special Litigation Section litigated many cases at the trial court level, as well as handled workers' compensation matters at the administrative hearing level and a number of appeals before the Alaska Supreme Court.

Appellate Work by the Section of Particular Note:

- The Alaska Supreme Court affirmed a summary judgment in the state's favor in Alpine Industries v. State, which dealt with the issuance of a public health bulletin by the Division of Public Health. The court found no basis for a defamation cause of action against a public health official.
- Briefing and oral argument occurred in the Alaska Supreme Court appeal of another summary judgment in the state's favor in Lexington Insurance v. State. The plaintiffs, insurers of the Denali Princess Hotel, claimed that the fire marshal was responsible for a fire that destroyed the hotel in 1996 because of various alleged failures during the building plan review process in the 1980's. The trial court found otherwise, and plaintiffs appealed. A decision is pending.
- Briefing was completed in the Alaska Supreme Court appeal challenging the 1997 Tort Reform legislation in the case of Evans v. State. Plaintiffs appealed the summary judgment granted to the state at the trial court level. The section is co-counseling the case with outside counsel. Oral argument occurred in April 2001, and a decision is pending.
- The section completed briefing in another Supreme Court appeal, arising from a wrongful death lawsuit alleging negligent search and rescue by the Alaska State Troopers on the Denali Highway (Kiokun v. State). The case was tried to a Bethel jury in 1999, which allocated 51 percent of the fault to the troopers and 49 percent to the decedents. Both sides have appealed various issues in the case. Oral argument will occur in FY 2002.
- An appeal was filed in the Alaska Supreme Court from the dismissal of a defamation action brought against some legislators and a legislative employee (Whalen v. Hanley). The plaintiffs claimed that comments made at a legislative hearing about a cost-of-living differential (COLD) dispute defamed them, but the trial court found legislative immunity foreclosed their lawsuit. Two of the original six plaintiffs appealed and briefing is ongoing.
- A federal civil rights action against a prosecutor, public defenders, and two district court judges concluded in summary judgment in the defendants' favor, and plaintiff appealed to the Ninth Circuit Court of Appeals (Bijan v. Schindler). The case arose out of a criminal non-support prosecution by the criminal division's Office of Special Prosecutions and Appeals, following the civil division's successful defense of a suit brought against the Child Support Enforcement Division. Briefing in the Ninth Circuit was completed.
- During this period, the section has additionally briefed several other Supreme Court appeals as well as two workers' compensation appeals in the Alaska Supreme Court and four superior court appeals in workers' compensation cases.

Additional dispositive motions of particular note won at the trial court:

In a significant number of cases the section either won complete or partial dismissal of lawsuits through summary judgment on the important issues listed below:

- The state does not owe an actionable duty to use studded tires on state vehicles.
- The Alaska Board of Marine Pilots was found not liable for its licensing actions of a marine pilot who was onboard during a grounding of the Star Princess.

- In a personal injury lawsuit arising from an incident in which an ATV operator struck a steel cable strung across a gravel haul road, claims against the State were dismissed by the Court and then by plaintiffs concerning whether the state retained an easement for the gravel haul road.  
The State is not liable in tort to a plaintiff for negligent good time accounting or for negligent inmate discipline while
- the plaintiff's assailant was incarcerated prior to his release.  
The superior court upheld the constitutionality of the statute entitling the state to recover 50% of a punitive damage
- award.

#### Trials:

- Three cases went to trial during FY 2001, all resulting in verdicts favorable to the state.
- In a civil rights action filed in United States District Court, Jordan v. Decker, the jury rejected claims that an Alaska State Trooper interfered with a non-custodial parent's efforts to fly his children from Kalskag to Anchorage. At the time of the underlying events, the non-custodial parent was under indictment for assaulting his wife in the presence of the children. In state superior court four individual Department of Corrections employees, including the commissioner were exonerated, concerning allegations of medical malpractice and civil rights violations. In another trial in Anchorage superior court in February 2001, (Linscott v. Frank), a teenager injured when he crossed the Glenn Highway in Palmer against a traffic light claimed that the state was negligent in maintaining the traffic signal. The jury concluded that the plaintiff's injuries were not caused by any acts of the state.
- The section also handled approximately 15 workers' compensation hearings involving state employee claims before the Alaska Workers' Compensation Board.

## Statutory and Regulatory Authority

AS 44.23.020

## Special Litigation

### Component Financial Summary

All dollars in thousands

	FY2001 Actuals	FY2002 Authorized	FY2003 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	1,801.3	1,967.6	2,034.5
72000 Travel	55.5	28.5	28.5
73000 Contractual	407.4	326.3	319.3
74000 Supplies	30.2	38.9	38.9
75000 Equipment	23.4	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
<b>Expenditure Totals</b>	<b>2,317.8</b>	<b>2,361.3</b>	<b>2,421.2</b>
<b>Funding Sources:</b>			
1003 General Fund Match	0.0	0.0	2.7
1004 General Fund Receipts	66.4	7.0	0.0
1007 Inter-Agency Receipts	2,251.4	2,354.3	2,418.5
<b>Funding Totals</b>	<b>2,317.8</b>	<b>2,361.3</b>	<b>2,421.2</b>

### Estimated Revenue Collections

Description	Master Revenue Account	FY2001 Actuals	FY2002 Authorized	FY2002 Cash Estimate	FY2003 Governor	FY2004 Forecast
<b>Unrestricted Revenues</b>						
Unrestricted Fund	68515	0.7	0.0	0.0	0.0	0.0
<b>Unrestricted Total</b>		<b>0.7</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Restricted Revenues</b>						
Interagency Receipts	51015	2,251.4	2,354.3	2,354.3	2,418.5	2,418.5
<b>Restricted Total</b>		<b>2,251.4</b>	<b>2,354.3</b>	<b>2,354.3</b>	<b>2,418.5</b>	<b>2,418.5</b>
<b>Total Estimated Revenues</b>		<b>2,252.1</b>	<b>2,354.3</b>	<b>2,354.3</b>	<b>2,418.5</b>	<b>2,418.5</b>

## Special Litigation

## Proposed Changes in Levels of Service for FY2003

None.

## Summary of Component Budget Changes

## From FY2002 Authorized to FY2003 Governor

*All dollars in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2002 Authorized</b>	<b>7.0</b>	<b>0.0</b>	<b>2,354.3</b>	<b>2,361.3</b>
<b>Adjustments which will continue current level of service:</b>				
-Year 3 Labor Costs - Net Change from FY2002	2.7	0.0	43.2	45.9
-Reduce funding for Tort Reform SLA 01 Ch3 Sec8(a) Pg31 L8	-7.0	0.0	0.0	-7.0
<b>Proposed budget increases:</b>				
-Legal Secretary Reclassification	0.0	0.0	21.0	21.0
<b>FY2003 Governor</b>	<b>2.7</b>	<b>0.0</b>	<b>2,418.5</b>	<b>2,421.2</b>

## Special Litigation

## Personal Services Information

Authorized Positions		Personal Services Costs		
	<u>FY2002</u>	<u>FY2003</u>		
	<u>Authorized</u>	<u>Governor</u>		
Full-time	26	26	Annual Salaries	1,597,864
Part-time	0	1	COLA	48,946
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	455,175
			<i>Less 3.21% Vacancy Factor</i>	(67,500)
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>26</b>	<b>27</b>	<b>Total Personal Services</b>	<b>2,034,485</b>

## Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	1	0	0	0	1
Attorney IV	7	2	1	0	10
Attorney V	2	0	0	0	2
Attorney VI	0	0	1	0	1
Law Office Assistant I	3	1	1	0	5
Law Office Assistant II	1	1	0	0	2
Paralegal II	3	1	1	0	5
<b>Totals</b>	<b>18</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>27</b>